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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,778	07/01/2004	Petr Kvita	HF/5-22603/A/PCT	8508
324 7590 06/25/2007 CIBA SPECIALTY CHEMICALS CORPORATION PATENT DEPARTMENT 540 WHITE PLAINS RD P O BOX 2005 TARRYTOWN, NY 10591-9005			EXAMINER KHAN, AMINA S	
			ART UNIT 1751	PAPER NUMBER
			MAIL DATE 06/25/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/500,778

Applicant(s)

KVITA ET AL.

Examiner

Amina Khan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5 and 7-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 7-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 2, 2007 has been entered.
2. Claims 1,2,4,5 and 7-19 are pending. Claims 3 and 6 have been cancelled. Claims 1,14,15,17,18 and 19 have been amended.
3. The 35 USC 103(a) rejection of claims 1,2,4,5 and 7-19 as being unpatentable over Clark et al. (US 6,734,299) in view of Tittmann et al. (US 5,705,605) is withdrawn.
4. The 35 USC 103(a) rejection of claims 1,2,4,5,7-9,11,12 and 14-18 as being unpatentable over Panandiker et al. (US 6,156,722) in view of Tittmann et al. (US 5,705,605) is withdrawn.

5. Claims 1,2,4,5,7,8,11,13 stand 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuzmenka et al. (US 6,627,591) in view of Tittmann et al. (US 5,705,605) for the reasons set forth in the previous office action.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1,2,4,5,7-9,11,13,14,17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuzmenka et al. (US 6,627,591).

Kuzmenka et al. teach granular (column 2, lines 1-15) dye fixing compositions comprising colorants and fragrances (column 2, lines 55-60), up to 90% Tinofix CL and Sandofix SWE (column 3, lines 25-60), 0.001-10% aminophosphonates (column 4, lines 45-60), 20-40% anionic surfactants (column 3, lines 1-5) or non-ionic surfactants of C9-C15 primary alcohol ethoxylates with 3-10 moles of ethylene oxide per mole of primary alcohol (column 5, lines 10-20), silicates (column 6, line 48) sodium citrate, zeolites and water (column 6, lines 26,63 and 34). Kuzmenka et al. teach washing cloths in water and the compositions (column 7, lines 15-25; example 4).

Kuzmenka does not teach all the instantly claimed embodiments in a single example and is silent as to the methods of production of the Tinofix CL.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the instantly claimed components from the teachings of Kuzmenka because Kuzmenka et al. teach similar compositions for treatment of similar textiles for the similar benefit of inhibition of dye transfer. One of ordinary skill in the art would expect the teachings of Kuzmenka to encompass the instant claims absent a showing of unexpected results.

Regarding the methods of production of Tinofix CL, they are just product by process. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324. The burden is on applicants to show product differences in product by process claims, see *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman*, 180 USPQ 324 (CCPA 1974); *In re Brown*, 173 USPQ 685 (CCPA 1972).

8. Claims 1,2,4,5,8-11,13,14 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettiol et al. (US 6,187,740) in view of Kuzmenka et al. (US 6,627,591) as applied to the claims above.

Bettiol teaches laundering fabrics for the benefit of inhibiting dye transfer (column 8, lines 1-5) with granular compositions comprising 1-25% hydrogen peroxide ore

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percarbonate (column 4, lines 55-65), carbonates, bicarbonates or polycarboxylates (column 6, lines 50-60), 0.1-60% surfactants of alkyl benzyl sulfonates or condensation products of alcohols and ethylene oxides (column 8, lines 35-68; column 9, lines 1-15; column 10, lines 55-65), 0.2-25% fabric softening agents (column 15, lines 50-56), 5-80% builders such as zeolites or citric acid (column 23, lines 30-65), perfumes (column 25, lines 10-15), 0.5-10% carboxy or hydroxymethylcelluloses (column 25, lines 25-40), and 0.001-10% dye transfer inhibitors such as copolymers of N-vinylpyrrolidone (column 27, lines 50-68; column 28, lines 1-10).

Bettiol does not teach the instantly claimed dye fixatives.

Kuzmenka et al. teach granular detergents comprising up to 90% Tinofix CL, Sandofix SWE (column 3, lines 25-60) and copolymer of N-vinylpyrrolidone (column 4, lines 1-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the methods and compositions of Bettiol by substituting Tinofix CL for the copolymer of N-vinylpyrrolidone because Kuzmenka teaches the functional equivalence of these dye fixatives in preventing dye transfer in detergent compositions. The substitution of art recognized equivalents only requires routine skill in the art. One of ordinary skill would have been motivated to combine the teachings of the references absent a showing of unexpected results.

Regarding the methods of production of Tinofix CL, they are just product by process. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made

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because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324. The burden is on applicants to show product differences in product by process claims, see *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman*, 180 USPQ 324 (CCPA 1974); *In re Brown*, 173 USPQ 685 (CCPA 1972).

9. Claims 12,15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettiol et al. (US 6,187,740) in view of Kuzmenka et al. (US 6,627,591), as applied to the claims above, and further in view of Panandiker et al. (US 6,156,722).

Bettiol and Kuzmenka are relied upon as set forth above.

Bettiol and Kuzmenka are silent as to the methods of production of the granular detergent composition.

Panandiker et al. further teaches the compositions are granular and made by combining base ingredients and spray drying to a low level of residual moisture then admixing remaining ingredients with the spray dried granules in a rotary mixing drum, and spraying on liquid ingredients to form finished composition (column 9, lines 35-45). Panandiker et al. further teaches that dye fixatives impart fabric benefits to fabrics and textile laundered in washing solutions (abstract) and improve washfastness of certain dyes (column 1, lines 30-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the methods and compositions taught by Bettiol and Kuzmenka by producing the granular detergents as taught by Panandiker et al. because Panandiker teaches granular detergent compositions are conventionally made in this manner. One of ordinary skill in the art would have been motivated to combine the teachings of the references absent unexpected results.

### ***Response to Arguments***

10. The declaration under 37 CFR 1.132 filed April 2, 2007 is insufficient to overcome the rejection of record, as they apply to the new grounds of rejection because: the declaration is not commensurate in scope with the claims. The declaration is limited only to a showing of unexpected results for a composition comprising 33% dye fixative prepared from diethylene triamine and dicyandiamide not to the broader limitation of 1-90% and formula (I) recited in claim 1.

11. Applicant's arguments filed regarding Kuzmenka in view of Tittman have been fully considered but they are not persuasive.

The applicant argues:

"All three of these key elements of the Kuzmenka et al. invention as given above as (3i), (3ii) and (3iii) are necessary to obtain the required result. It is the Examiner's position that the combination of Kuzmenka et al. together with Tittmann et al. (see above) renders the instant invention obvious. However, the teaching of Kuzmenka et al. in view of Tittmann et al. results in a composition which comprises: Tittmann et al.'s polycondensate as the dye fixing agent. Kuzmenka et al.'s N-heterocyclic polymer, and Kuzmenka et al.'s nonionic surfactant. A nonionic surfactant may be used in the instant invention, however there is no obligatory N-heterocyclic polymer in the instant invention but a specific amount of a carrier, such as water soluble inorganic or organic salts, alkali metal silicates, carbonates, bicarbonates and borates, alkali metal phosphates and alkali metal sulfates (see page 6, lines 13 to 6 from the bottom



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and the following paragraphs until page 8, last line). Thus the teaching of Kuzmenka et al. in view of Tittmann et al. does not result in the instant invention."

The examiner respectfully disagrees. Kuzmenka clearly teaches Tinofix CL which meets the instantly claimed reaction product of a dicyandiamide and diethylene triamine. Tinofix CL could efficiently be made by the methods of Tittmann or could be substituted with the dye fixatives of Tittmann, which teach a similar reaction product. Furthermore Kuzmenka teaches compositions comprising zeolites (column 6, lines 26,63 and 34). For this reason the rejections are maintained.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amina Khan whose telephone number is (571) 272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



AK  
June 20, 2007

  
**LORNA M. DOUYON**  
**PRIMARY EXAMINER**